

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 13831 of 2005

Date of Decision: 8.5.2007

Gurmeet Singh

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Amit Chopra, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for quashing order dated 6.4.2005 (P-6), whereby the claim of the petitioner for grant of pension and other pensionary benefits has been rejected. The petitioner has further sought a writ of mandamus directing respondent Nos. 1 to 3 to grant pension and all other pensionary benefits along with interest by taking into consideration the total service rendered by the petitioner from the date of his initial appointment.

Brief facts of the case are that during his career of teaching, the petitioner had worked in three different schools. The details of the service rendered by the petitioner is as under:-

Sr. No.	Name of the School	Period	Total length of service
1.	Shri Parkash Ashram High School, Beri Gate, Amritsar (as Drawing Teacher)	23.4.1971 to 1.1.1990	18 years 8 months and 9 days.
2.	Khalsa College Senior Secondary School, Amritsar (as Social Studies Master)	2.1.1990 to 30.4.1990	3 months and 30 days
3.	Sant Singh Sukha Singh Khalsa Senior Secondary School, The Mall, Amritsar (as Social Studies Master)	30.4.1990 till date of superannuation i.e. 30.11.1999	9 years 7 months 0 days
		Total Service=	28 years 7 months 9 days

It is appropriate to notice that all the above mentioned Schools are Government aided schools and grant-in-aid was granted by the State of Punjab. It is claimed that the petitioner had worked in the said schools after applying through proper channel and in this manner he has rendered continuous regular service from 23.4.1971 to 30.11.1999 without any break.

It is not disputed that the conditions of service of the petitioner were governed by the Punjab Privately Managed Recognised Schools (Security of Service) Act, 1979 (for brevity, 'the 1979 Act') and under the provisions of the Punjab Privately Managed Recognised Schools Employees (Security of Service), Rules, 1981 (for brevity, 'the 1981 Rules'). The aforementioned 1979 Act and the 1981 Rules came into force much after the appointment of the petitioner in the aforementioned schools. It is apposite to mention that as per the provisions of the 1979 Act as well as the 1981 Rules, the scale of pay and

allowances of the employees working in the privately managed aided schools, have to be at par with that of their counter parts working in the Government Schools. As per Rule 22 of the 1981 Rules, every Managing Committee of a Privately Managed Recognised School is required to establish a provident fund for the employees of the school and the employee is required to contribute to the said provident fund.

On 25.5.1989, the State of Punjab issued instructions on the subject of grant of retirement benefits like pension and gratuity in lieu of contributory provident fund to the employees of privately managed aided schools in the State of Punjab and it was decided to grant Death-cum-Retirement Gratuity/Pension/Family Pension and other related benefits in lieu of Contributory Provident Fund to the employees of privately managed aided schools with effect from 5.2.1987 at the rates admissible to the employees of the State Government holding corresponding posts in the schools run by the Government. The said benefits were to be granted subject to the conditions laid down in the instructions dated 25.5.1989 (P-3). The State of Punjab also inserted Rule 22A in the 1981 Rules postulating therein that the Government would make a scheme for grant of retirement benefits to the employees of the privately managed recognised schools, who were working on the aided posts on 5.2.1987. Rule 22A of the 1981 Rules reads as under:-

“22A. The Government shall make a scheme for the grant of retirement benefits to the employees of the privately managed recognised schools who –

- (a) are appointed to the aided posts on or after the 5th day of February, 1987; and
- (b) were working on aided posts on the 5th day of February, 1987.

Provided that the provisions of the scheme so made shall not apply to the employees who retired from such posts before the 5th day of February, 1987.

Provided further that the employees who were appointed to the aided posts-

- (i) before the 5th day of February, 1987 and who have attained or will attain the age of superannuation on or after that date, and
- (ii) on or after the 5th day of February, 1987, but before the date of commencement of the Punjab Privately Managed Recognised Schools Employees (Security of Service) (First Amendment) Rules 1991 shall have the right to exercise option within a period of four months from the date of publication of the scheme to be or not to be governed by the provisions of the scheme.”

On 10.2.1992, the State of Punjab notified the scheme, namely, ‘the Punjab Privately Managed Recognised Schools Retirement Benefits Scheme, 1992 (for brevity, ‘the 1992 Scheme’). As per the 1992 Scheme, the employees of privately managed aided schools who were working on the aided posts before 5.2.1987 and attained or were to attain the age of superannuation on or after the said date, were entitled to opt for pension and other pensionary benefits. Clauses 6 and 7 of the 1992 Scheme, being relevant in the present context, are reproduced as under:-

“6. Qualifying Service

- (1) The Service of an employee shall not qualify for retirement benefits under this Scheme unless:
 - (i) he attains the age of eighteen years;
 - (ii) he takes charge of the aided post to which he is first appointed except for which it is

otherwise provided by special rules or contract;

and

(iii) the service is on an aided post on regular basis.

- (2) The leave admissible under the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981 and under the instructions issued by the Department from time to time shall qualify for pension but leave without pay and period of suspension, overstay of leave not subsequently regularised under the above said rules and the period of break in service shall not be reckoned as qualifying service.
- (3) The service rendered in one or more privately managed recognized aided schools under the same management shall count for retirement benefits; provided the transfer was made in terms of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981.
- (4) In a case where the total qualifying service is less than ten years, no pension benefit shall be admissible.
- (5) The service rendered on an aided post in another privately managed recognized schools in the State of Punjab, shall count for retirement benefits;
Provided that the Contributory Provident Fund account of the employee in the previous school continued as such in the subsequent school to which he is transferred or appointed and there is no break in service.

- (6) The qualifying service will be taken into account with effect from an employee started contributing towards the Contributory Provident Fund.

7. Condonation of interruption

(1) In the absence of specific indication to the contrary in the service record of the employee, an interruption between spells of service rendered by an employee under the same Managing Committee, shall be treated as automatically condoned and shall be treated as qualifying service for retirement benefits;

Provided that the interruption caused by resignation, dismissal, removal from service or due to participation in strike shall not be condoned.

(2) The period of interruption not condoned by the Managing Committee shall under no circumstances be reckoned as qualifying service for retirement benefits.”

On 1.7.2003, respondent No. 6 School forwarded his case to the District Education Officer, Amritsar-respondent No. 3 for grant of pension and other pensionary benefits to him. When no decision was taken by respondent Nos. 1 to 3, the petitioner approached this Court by filing C.W.P. No. 8657 of 2004, which was disposed of vide order dated 28.5.2004 (P-5) and direction was issued to the respondents to treat the writ petition as a representation of the petitioner and to decide the same within a period of four months from the date of receipt of certified copy of the order, by passing a speaking order. Vide impugned order dated 6.4.2005 (P-6), respondent No. 3 has rejected the claim of the petitioner on the following grounds:-

- (i) CPF deduction of the petitioner started w.e.f. 1.4.1972;
- (ii) It is not clear whether he had applied for his transfer to other schools through proper channel;

- (iii) He withdrew the entire CPF amount of Rs. 99,661/- prior to his appointment as Social Studies Master in respondent No. 6 school, therefore, his case is not covered under sub-clause (5) of clause 6 of the 1992 Scheme because he did not continue his CPF account and deposited the due amount subsequently;
- (iv) His case is also not covered under clause 7(1) of the 1992 Scheme; and
- (v) The judgments relied upon by the petitioner are not applicable to his case.

For the relief claimed in the instant petition, as noticed in the opening para of the order, the petitioner has placed reliance on a Division Bench judgment of this Court in the case of **Kasturi Lal Khurana v. State of Punjab, 2003(4) SCT 462** and two other judgments of this Court rendered in the cases of **M.R. Juneja v. State of Punjab, 2004(3) RSJ 236**; and **Om Parkash v. State of Punjab and others (C.W.P. No. 14891 of 1996, decided on 5.2.2003 - Annexure P-7)**.

In the written statement filed on behalf of respondent Nos. 1 to 3, the aforementioned periods of service rendered by the petitioner in different schools has not been denied. However, respondent Nos. 1 to 3 have contested the claim of the petitioner on the same grounds as are incorporated in the impugned order, dated 6.4.2005 (P-6).

We have heard learned counsel for the parties and are of the view that the strict rule of interpretation in such like matters would lead to defeat justice and the object of beneficial legislation of the Act, Rules and the Scheme. In that regard, the matter has already been considered in the case of M.R. Juneja (supra). Rejecting the objection that the petitioner did not apply for his transfer to other schools through proper channel, this Court in the case of M.R. Juneja (supra) has observed as under:-

“8. In order to appreciate the stand taken by the respondents for not counting the service rendered by the petitioner in M.D.A.S. Higher Secondary School at Moga, namely, that he did not apply for the fresh appointment at Ferozepur through his previous employer at Moga, I am of the view that the provisions of the 1979 Act and the 1981 Rules framed thereunder are primarily meant for protecting and regulating the service conditions of the employees of the government aided private schools. As a cardinal rule of interpretation, an effort should always be made to interpret the Act and the Rules to achieve the object for which the legislature stepped into this field. The provisions of the Act and the Rules framed thereunder, therefore, cannot be interpreted in a manner which may defeat the legislative object by negating the protection of conditions of service of the employees of Govt. aided private schools. Keeping in view these principles, in my view Rule 9(2) of the 1981 Rules, upon which reliance has been placed by the respondents, cannot be construed to mean that the appointment of a teacher in another aided school will be rendered illegal for the purpose of grant of pension merely because he did not apply for the second post in another school through his previous employer. The object of this Rules is that the first employer is not taken by surprise if an employee intends to resign from his service so as to take up another assignment. In the absence of any such objection by the previous employer on record, the State Government cannot be permitted to take shelter behind this technicality. Moreover, the petitioner was appointed in H.M. Higher Secondary School at Ferozepur in the year 1971 and at that

time, neither the 1979 Act nor the 1981 Rules framed thereunder were in force. In the absence of retrospective applicability of these provisions, the respondents cannot be permitted to press into this objection.”

When the aforementioned principles are applied to the facts of the present case, it becomes evident that the petitioner had joined the Khalsa College Senior Secondary School, Amritsar, on 2.1.1990 after rendering about 19 years of service with Shri Parkash Ashram High School, Beri Gate, Amritsar, through proper channel and without any break. The position is the same with regard to his joining service at Sant Singh Sukha Singh Khalsa Senior Secondary School, the Mall, Amritsar. Therefore, the liberal interpretation for such like beneficial legislation to advance the legislative object must be accepted, especially when the assertion of the petitioner that he applied through proper channel has not been seriously disputed. Therefore, there is no substance in the objection raised on behalf of the respondents and the whole service of the petitioner deserve to be counted as qualifying service for the purposes of pension and other retiral benefits.

Likewise, the objection with regard to deposit of Contributory Provident Fund deduction w.e.f. 1.4.1972 would also not of any consequence. Firstly, the Scheme itself had come into force in the year 1987. Secondly, the Contributory Provident Fund amount of Rs. 99,661/- withdrawn by the petitioner has already been deposited back on 30.6.2004 along with interest, amounting to Rs. 1,17,317/-. Moreover, the petitioner has placed reliance on clause 6(5) of the 1992 Scheme which specifically provides that the service rendered on an aided post in another privately managed recognised school is to count for retirement benefits. According to the proviso the Contributory Provident Fund account of the employee in the previous school is continued as such in the subsequent school to which he was transferred and there was no break in service.

The petitioner fulfils both the requirements because he had continued depositing Contributory Provident Fund in the subsequent school on his appointment and there has not been any break in his service. On this additional ground also the petitioner deserve to succeed and the objection in that regard is liable to be rejected. In so far as the objection that the case of the petitioner is not covered by clause 7(1) of the 1992 Scheme, we are of the view that there is no force in it because after relieving on 1.1.1990 from Shri Parkash Ashram High School, Beri Gate, Amritsar, the petitioner joined on 2.1.1990 at Khalsa College Senior Secondary School, Amritsar. He was relieved from Khalsa College Senior Secondary School, Amritsar, on 30.4.1990 and joined on the same day at Sant Singh Sukha Singh Khalsa Senior Secondary School, the Mall, Amritsar. Therefore, there is no substance in the objection raised.

In view of the above, we find that on the basis of statutory Rules, the 1992 Scheme, the principle for interpretation of statutes/rules and the binding precedent the relief claimed by the petitioner deserves to be accepted. Accordingly, this petition succeeds. The respondents are directed to count the entire service of the petitioner w.e.f. 23.4.1971 to 30.11.1999 as qualifying service for the purposes of pension. The needful shall be done within a period of two months from the date of receipt of certified copy of the order. The petitioner shall also be entitled to payment of interest @ 12% from the date the pension became payable till it is actually paid, as has been laid down by a Full Bench of this Court in the case of **R.S. Randhawa v. State of Punjab, 1997(3) RSJ 318**. However, the amount of Contributory Provident Fund, which the petitioner was required to deposit, alongwith interest @ 12% per annum, if not already paid, may be adjusted out of the amount which the petitioner may be found entitled to get as a result of re-computation of retiral benefits payable to him in terms of this order.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

May 8, 2007
Pkapoor

(RAJESH BINDAL)
JUDGE